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10 **UNITED STATES DISTRICT COURT**
11
12 **EASTERN DISTRICT OF CALIFORNIA**

13 CONNIE A. CARDINALE, an
14 individual,

15 Plaintiff,

16 vs.

17 XAVIER BECERRA, an individual sued
18 in his official capacity only; SCOTT R.
19 JONES, an individual sued in his official
20 and individual capacities; COUNTY OF
SACRAMENTO, a governmental entity;
SACRAMENTO COUNTY SHERIFF'S
DEPARTMENT, a public entity;
CLINTON ROBINSON (#305), an
individual sued in his official and
individual capacities; and Does 1 through
20, all sued in their individual capacities,

21 Defendants.

22 Case No. 2:20-cv-1325-MCE-
23 CKD

24 **PLAINTIFF'S OPPOSITION
TO DEFENDANTS' MOTION
FOR SUMMARY
JUDGMENT**

25 Date: Under submission
26 Time: N/A
27 Ctrm: 7

28

1 **I. Defendants' Motion Does Not Address That The Search Warrant Was Overbroad**
 2 **As To Items 4, 6, 7, 8, 9, 10, 11 And The Unnumbered Request Concerning Vehicles.**

3 Plaintiff's lawsuit contends that the deputies did not have probable cause to search
 4 for and seize nine items of the eleven property items listed in the warrant.¹ Defendants'
 5 Rule 56 motion, however, argues only probable cause for the firearms category (item no.
 6 2); defendants' motion says nothing about the other eight items for which the warrant was
 7 overbroad. That is, defendants' motion presents *nothing* establishing "probable cause"
 8 to search for and seize property items no. 4 (financial records); no. 6 (identity of the
 9 Orangevale homeowner); no. 7 (identities of persons related to the homeowner); no. 8
 10 (digital storage devices); no. 9 (cell phones, smart phones etc.); no. 10 (locked safes,
 11 boxes and other storage containers); no. 11 (legal and illegal narcotics); and the
 12 unnumbered request for searching and seizing all vehicles. Defendants make no effort to
 13 explain probable cause for searching for illegal narcotics, or the Orangevale residence's

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15 ¹ Although numbered 1 through 11, there was no property item no. 5. Additionally,
 16 there was an unnumbered request covering vehicles. Hence, the warrant application
 17 identified a total of 11 property items to search, ten of which were numbered. Of these
 18 11 property items, Plaintiff does not dispute the deputies had probable cause for searching
 19 for and seizing item nos. 1 and 3 – physical evidence related to Ryan Stucky's assault on
 20 his mother (*see ECF 45-2 @ pp. 40-41*). In this lawsuit Plaintiff challenges as overbroad
 21 only the following nine property items: no. 2 (firearms and related items); no. 4 (financial
 22 records); no. 6 (items establishing the identity of the Orangevale homeowner); no. 7
 23 (records of names and addresses of persons associated with the homeowner); no. 8
 24 (digital storage devices, e.g., computers, hard drives and the like); no. 9 (cell phones,
 25 smart phones and their related devices such as memory cards, cords, chargers); no. 10
 26 (locked safes, boxes and other storage containers); no. 11 (legal and illegal narcotics);
 27 and the unnumbered request to search *and* seize all vehicles at the Orangevale address.
 28 *See ECF 45 @ pp. 2:4-3:2.*

29 Should defendants argue that Plaintiff's Complaint did not allege the warrant's
 30 overbreadth as to items other than the specific items of the firearms, the argument is
 31 meritless. The Complaint put defendants on notice of Plaintiff's overbreadth claims.
 32 *Leatherman v. Tarrant County*, 507 U.S. 163, 168 (1993); *Karim-Panahi v. Los Angeles*
 33 *Police Dept.*, 839 F.2d 621, 624 (9th Cir. 1988). And if defendants thought differently,
 34 then they should have sought a ruling under F.R.Cv.P. 12(b)(6).

1 homeowner records, or Ms. Cardinale's financial records, computers, smart phone etc.,
2 or Ms. Cardinale's address books or contact records.

3 Defendants were obligated to establish "probable cause" for every one of the nine
4 challenged property items. *In re Grand Jury Subpoenas*, 926 F.2d 847, 857 (9th Cir.
5 1991); *United States v. Spilotro*, 800 F.2d 959, 963 (9th Cir. 1986). For reasons already
6 shown in Plaintiff's Rule 56 motion (ECF 54 @ 7:12-3:17) defendants thus concede that
7 the warrant was overbroad as to eight of the nine challenged categories.

8 As to defendants' remaining arguments, because most have already been addressed
9 in Plaintiff's Rule 56 motion, both moving and reply papers (ECF 45 and 54) Plaintiff
10 limits this opposition to a few salient points.

11 **II. The December 25, 2019 Warrantless Seizure Of Plaintiff's Long Guns Violated
12 The Second And Fourth Amendments.**

13 Defendants admit that their warrantless seizure of Plaintiff's long guns on
14 December 25 was for "safekeeping" and *not* because the firearms were evidence of crime
15 or contraband. ECF 50-1 filed 6/30/23 @ page 2 (response to fact no. 3). That alone
16 establishes the Fourth Amendment violation. *United States v. Hawkins*, 249 F.3d 867, 872
17 (9th Cir. 2001) (Property seizure without a warrant is "per se unreasonable" with "burden
18 on [the government] to persuade the district court that [the] seizure comes 'under one of
19 a few specifically established exceptions to the warrant requirement.' "); *Caniglia v.
20 Strom*, 141 S.Ct. 1596, 1599-00 (2021) (Fourth Amendment does not authorize police to
21 seize legal firearms that are not evidence of crime under a "community caretaking"
22 exception to the warrant requirement.).

23 Regarding the December 25, 2019 seizures, defendants' reliance on the
24 "emergency" exception is without merit. Defendants admitted that *none* of Plaintiff's long
25 guns were contraband or evidence of crime, while defendants offered no evidence of "an
26 actual or imminent injury inside [Ms. Cardinale's] home" when the officers seized the
27 long guns. Hence, as a matter of law there was no emergency exception to the warrant
28 requirement. *Bonivert v. City of Clarkson*, 883 F.3d 865, 876-77 (9th Cir. 2018).

1 The seizure also violated the Second Amendment in that defendants do not offer
2 any justification showing that warrantless seizure of firearms for “safekeeping” comports
3 with “firearm regulation broadly in effect when the Second or Fourteenth Amendment
4 was ratified.” *Baird v. Bonta*, 81 F.4th 1036, 1040-41 (9th Cir. 2023) (*citing New York*
5 *State Rifle & Pistol Ass’n, Inc. v. Bruen*, 142 S.Ct. 2111, 2129-30 (2022)).

6 **III. Except For The Smith & Wesson Revolver, The Warrant Was Overbroad In
7 Seeking Seizure Of All Of Plaintiff’s Firearms.**

8 Other than the specifically-identified Smith & Wesson revolver Ryan Stucky took
9 on December 25, 2019, defendants did not have probable cause for seizing the other
10 firearms whether with or without a warrant. *Millender v. County of Los Angeles*, 620 F.3d
11 1016, 1024-27 (9th Cir. 2010) (*en banc*) (Warrant authorizing seizure of *all* firearms
12 when police knew that the only firearm involved in crime was a “ ‘black sawed off
13 shotgun with a pistol grip,’ ” was overbroad in violation of the Fourth Amendment.),
14 *overruled on oth. grds. sub. nom., Messerschmidt v. Millender*, 565 U.S. 535 (2012).²

15 It is also worth noting that the facts here are more egregious than in *Millender*.
16 There, the warrant’s affiant truthfully stated that the warrant’s target had used the firearm
17 (“black sawed off shotgun with a pistol grip”) to shoot at the victim. Here, there was (a)
18 no shooting and (b) Robinson (the warrant’s affiant) *false*ly stated that there had been a
19 shooting. ECF 45-2 @ page 42 (item 10: “ . . . which could contain evidence *related to*
20 *the shooting*.”).

21 **IV. Defendants’ Refusal To Promptly Return Plaintiff’s Firearms Violated the
22 Second And Fourth Amendments.**

23 **A. Second Amendment.**

24 “A government may regulate the manner of that carry [of a firearm] only if it
25 demonstrates that the regulation is identical or closely analogous to a firearm regulation

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28 ² As previously explained, the Ninth Circuit’s *en banc* holding on this point
remains the law in this Circuit. ECF 45 (filed 6/2/23) at page 15 fn.1.

1 broadly in effect when the Second or Fourteenth Amendment was ratified.” *Baird v.*
2 *Bonta*, 81 F.4th at 1040-41.

3 Defendants have offered *nothing* that their refusal to return to Ms. Cardinale’s her
4 firearms was justified by a “closely analogous [] firearm regulation broadly in effect when
5 the Second or Fourteenth Amendment was ratified.” Defendants’ failure to do so is fatal
6 to their motion. *Baird*, 81 F.4th at 1041 (“A district court should not try to help the
7 government carry its burden by sift(ing) . . . historical materials to find an analogue.”)
8 (Cleaned up.).

9 *Frein v. Pennsylvania State Police*, 47 F.4th 247 (3rd Cir. 2022) is on point. There,
10 pursuant to a warrant the police seized various firearms belonging to the *parents* of the
11 suspect. The police later refused to return the firearms to the parents even though the
12 police admitted the firearms (a) were lawfully possessed by the parents, (b) were not
13 contraband and (c) were not evidence of *any* crime the police were investigating. The
14 district court dismissed the parents’ claims of wrongful takings in violation of the Fifth
15 Amendment, and their Second Amendment claims, and the parents appealed. *Held*: the
16 police refusal to return the firearms violated the Second Amendment (in addition to
17 constituting a takings without compensation). In holding that “the Second Amendment
18 protect[ed] [the parents’] right to keep [their] lawfully owned guns,” *Frein* applied
19 *Bruen*’s analytical framework on whether “‘this Nation’s historical tradition’” of Second
20 Amendment protections, justified the police refusal to return the firearms. 47 F.4th at
21 253-54. In so doing the Third Circuit noted that *Bruen* “abrogat[ed]” the Third Circuit’s
22 “previous framework for evaluating Second Amendment challenges.” *Id.* Relying on
23 *Bruen* and *District of Columbia v. Heller*, 554 U.S. 570 (2008), *Frein* held that the police
24 refusal to return the firearms violated the parents’ Second Amendment right that they can
25 “‘retain’ their firearms ‘in (their) custody.’” 47 F.3d at 253-56

26 Defendants’ lame argument that seizing and withholding from Ms. Cardinale her
27 firearms did not stop her from obtaining replacement firearms, is frivolous. The Second
28 and Fourth Amendments protected possessory interests in *her* firearms. *Brewster v. Beck*,

1 859 F.3d 1194, 1196-97 (9th Cir. 2017) (30 day impound of Plaintiff's vehicle violated
2 her Fourth Amendment rights to her possessory interests in that vehicle); *Frein v.*
3 *Pennsylvania State Police*, 47 F.4th 247, 254 (3rd Cir. 2022) ("The Second Amendment's
4 text protects a person's right to **keep his own guns** for self-defense." [Emphasis added].).

5 Were defendants' argument correct, then the Supreme Court got it wrong in
6 *Caniglia*. Likewise, the Third Circuit missed the boat when it held in *Fruin* that the police
7 refusal to promptly return the firearms to their owners, violated the Second Amendment
8 as interpreted by *Bruen*. Also wrongly decided under defendants' logic, were the Ninth
9 Circuit decisions in *Brewster* and *Miranda*. In both those cases the police seized and
10 impounded the plaintiffs' vehicles. Hence, applying defendants' reasoning the vehicle
11 impoundments were constitutional since state law did not prevent the plaintiffs "from
12 purchasing, possessing, or utilizing" other vehicles.

13 **B. The Fourth Amendment.**

14 The ongoing seizures of Ms. Cardinale's firearms were Fourth Amendment
15 seizures that required justification. *Brewster*, 859 F.3d at 1195-96; *Sandoval v. County*
16 *of Sonoma*, 912 F.3d 509, 516-17 (9th Cir. 2018); *Snitko v. United States*, 2021 WL
17 3139706 *2 (C.D. Cal. 2021) (Pursuant to a warrant the government seized cash
18 belonging to the plaintiff but later admitted that the cash was not contraband or
19 implicated in criminal activity. Citing *Brewster*, the district court held that "the Fourth
20 Amendment [was] implicated by the Government's delay in returning seized property,
21 irrespective of the Government's initial basis for seizing the property," and ordered that
22 the government return the cash to its owner.).

23 Defendants' argument that state law justified both the December 25, 2019 seizures
24 (ECF 61-1 @ page 16 fn.2) and defendants' later refusal to return to Ms. Cardinale her
25 firearms until she complied with California Department of Justice regulations (ECF 61-1
26 @ 23:12-14), is frivolous. State laws and regulations, in and of themselves, cannot
27 establish constitutional justification. U.S. Const., Art. VI (Supremacy Clause); *New York*
28 *State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. __, 142 S.Ct. 2111, 2125-26 (2022);

1 *Brewster v. Beck*, 859 F.3d at 1196-97 (9th Cir. 2017) (Notwithstanding state law
2 mandating that the vehicle be impounded for 30 days, the impound was
3 unconstitutional.); *Miranda v. City of Cornelius*, 429 F.3d 858, 864 (9th Cir. 2005)
4 (Property seizure “pursuant to the authority of a city ordinance and state statute does not,
5 in and of itself, determine the reasonableness of the seizure under the Fourth Amendment
6 . . .”).

7 **V. The Entity Defendants Are Liable For The § 1983 Violations.**

8 For reasons previously explained, the two entity defendants (Sacramento County
9 and its Sheriff’s Department) are liable for the constitutional violations. ECF 45 filed
10 6/23/23 @ 20:16-21:1; ECF 54 filed 7/10/23 @ 6:17-9:18.

11 Defendants’ claim that Plaintiff’s allegations were insufficient to show *Monell*
12 claims (ECF 61-1 @ 14:3-7) is meritless. Federal courts apply a “notice” pleading
13 standard. *Conley v. Gibson*, 355 U.S. 41, 47 (1957), reaffirmed *Leatherman v. Tarrant*
14 *County*, 507 U.S. 163, 168 (1993). Thus, the allegations in Plaintiff’s complaint were
15 sufficient to put defendants on notice of Plaintiff’s *Monell* claims. *See Karim-Panahi v.*
16 *Los Angeles Police Dept.*, 839 F.2d 621, 624 (9th Cir. 1988). If defendants did not think
17 so, then they should have sought the Court’s ruling on a F.R.Cv.P. 12(b)(6) motion.

18 **VI. No Individual Defendant Is Entitled To Qualified Immunity.**

19 As of December 2019, the law was clearly established that there must be probable
20 cause for each specific property item a law enforcement officer seizes even if the officer
21 has an otherwise valid warrant. *United States v. Spilotro*, 800 F.2d 959, 963 (9th Cir.
22 1986). Furthermore, the law was also clearly established that when the officer knows the
23 specific firearm at issue for seizure as either evidence and/or contraband, the officer may
24 not seek to seize *all* firearms regardless of type, make or model, and *all* firearms-related
25 items. *Millender*, 620 F.3d at 1024-27.

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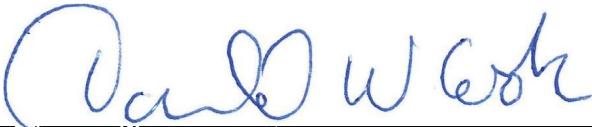
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1 **VII. Conclusion.**

2 For the foregoing reasons defendants' motion must be denied.

3 DATED: November 27, 2023

4 **DONALD W. COOK**
5 Attorney for Plaintiff

6 By 
7 Donald W. Cook

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